

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**James Anthony Kroger,
Debtor.**

BKY No. 22-30922

**Mary R. Jensen, Acting United States Trustee,
Plaintiff,**

v.

Adv. No. 22-03043

**James Anthony Kroger,
Defendant.**

NOTICE OF HEARING AND MOTION FOR SANCTIONS

1. The plaintiff moves the Court for discovery sanctions and gives notice of hearing.
2. The Court will hold a hearing on this motion at 10:30 a.m. on Wednesday, June 14, 2023, before the United States Bankruptcy Court, Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.
3. Any response to this motion must be filed and delivered not later than Friday, June 9, 2023, which is five days before the time set for the hearing. **UNLESS A RESPONSE TO THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(a) & (b), 28 U.S.C. § 157(a) and (b)(1), 28 U.S.C. § 151, Fed. R. Bankr. P. 5005, 7007, and 9013, and Local Rule 1070-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B).
5. This motion arises under Fed. R. Bankr. P. 7037. This motion is filed under Fed. R. Bankr. P. 7007 and 7037, and Local Rules 7007-1, 9006-1, 9013-1, and 9013-2.
6. On December 2, 2022, the United States Trustee commenced this adversary proceeding by filing a complaint seeking denial of the defendant's discharge. (Compl., #1.)
7. On January 5, 2023, the defendant filed an answer to the complaint. (Answer, #11.)
8. The plaintiff filed an amended complaint on January 26, 2023. (Amended Compl., #12.)
9. On February 15, 2023, the defendant answered the plaintiff's amended complaint. (Answer, #17.)
10. On March 15, 2023, the Court issued a scheduling order. (Order, #18.) The scheduling order contains a discovery and nondispositive motion deadline of June 13, 2023, and a dispositive motion deadline of July 13, 2023. (*See id.*, at ¶¶ 1-2.)

11. On March 31, 2023, the plaintiff served discovery requests on the defendants.

(Kreuziger Decl., Ex. 1.)

12. On April 17, 2023, the plaintiff issued a document subpoena to Phyllis Kroger,

the defendant's mother. (*Id.*, Ex. 2.)

13. On April 28, 2023, the defendant sent discovery responses to the plaintiff.

(*Id.*, Ex. 3.)

14. On May 1, 2023, counsel for the plaintiff sent correspondence to counsel for

the defendant regarding the defendant's defective discovery responses. (*Id.*,

Ex. 4.)

15. On May 5, 2023, counsel for the plaintiff granted counsel for the defendant

additional time to respond to the plaintiff's May 1, 2023 letter. (*See id.*, Ex. 5.)

16. On May 8, 2023, the defendant emailed counsel for the plaintiff. (*Id.*, Ex. 6.)

The email purports to be a response to the plaintiff's document subpoena

issued to Phyllis Kroger. (*See id.*)

17. On May 11, 2023, counsel for the plaintiff sent a letter to Phyllis Kroger and

sent copies of said letter to the defendant and counsel for the defendant. (*Id.*,

Ex. 7.)

18. Also on May 11, 2023, counsel for the defendant sent counsel for the plaintiff a

letter regarding discovery. (*Id.*, Ex. 8.)

19. On May 17, 2023, the defendant sent the plaintiff a document that purports to

be a power of attorney form executed by Phyllis Kroger. (*See* Ex. 9.)

20. For the reasons set forth in the accompanying memorandum of law, the plaintiff requests that the Court enter a default judgment against the defendant.

In the alternative, the plaintiff requests that the Court enter an order compelling the defendant to respond by a date certain.

21. For the reasons set forth in the accompanying memorandum of law, the plaintiff also requests that the Court issue an order compelling Phyllis Kroger to adequately respond to the document subpoena.

22. For the reasons set forth in the accompanying memorandum of law, the plaintiff also requests that the Court amend its scheduling order to account for the substantial delays occasioned by the defendant and Ms. Kroger.

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23. This motion is supported by the Declaration of Colin Kreuziger and attached exhibits, Declaration of Nissa Atkinson and attached exhibits, and the attached memorandum of law.

Dated: May 24, 2023

MARY R. JENSEN,
ACTING UNITED
STATES TRUSTEE
Region 12

/e/ Colin Kreuziger
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